IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) No.680/2004

M/s. SAMSONELECTRICALS & ANR. ..... Petitioners
! through: Mr.Sumit Bansal, Advocate

VERSUS

$ HANSRAJ MIGLANI ..... Respondents
^ through: None.

% **D**ATE OF DECISION: 26-03-2007

CORAM:
* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J. (Oral)

1. Respondent, Hans Raj Miglani, filed a suit for recovery of Rs.97,946/- against the petitioner. According to the petitioner, no money was payable to Hans Raj Miglani. Petitioner claimed to be in possession of a tape recorded conversation in which Hans Raj Miglani had admitted that he had not to receive any money from the petitioner.

2. An application was moved by the petitioner before the learned Trial Judge under Sections 3, 45 and 146 of the Indian Evidence Act read with Section 151 CPC praying that Hans Raj

Miglani be directed to get recorded his voice on a blank audio cassette so that the petitioner could send the same for an analysis of a voice expert to prove that the tape recorded conversation on which the petitioner was relying contained the voice of the petitioner.

3. Learned Trial Judge has dismissed the application holding that there was no provision in law which permitted the court to direct recording of sample voice of Hans Raj Miglani.

4. As per decision of the Supreme Court reported as AIR 1975 SC 1788, *Z.B.Bukhari Vs. B.R.Mehra*, it is a settled legal position that tape records of speeches are documents as defined by Section 3 of the Evidence Act. Thus, cassette or tape recording of the alleged conversation between Hans Raj Miglani and an employee of the petitioner would be a document.

5. In the report published as AIR 1971 SC 1162, *N.Sri Rama Reddy Vs. V.V.Giri,* it was held that a tape recorded conversation was a primary and direct evidence admissible for what had been said by the speaker and picked up by the receiver.

6. Under Section 155 of the Evidence Act, credibility of a witness can be impeached by proof of former statements which are inconsistent with any part of his evidence and which is liable to be contradicted. Thus, the tape recording of a conversation if

contains a former statement which is inconsistent with current statement made by a witness would be good evidence to impeach the credibility of a witness.

7. Section 45 of the Evidence Act pertains to opinions of experts. It reads as under :-

> "45. Opinion of Experts.- When the court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger expressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger expressions are relevant facts.
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> Such persons are called experts."

8. In the decision reported as AIR 1990 SC 1050, *State Vs. S.J.Choudhary*, it was held that with the growth of forensic science, it was permissible to match the march of forensic science with an extended ambit of Section 45 of the Evidence Act. Opinion upon a point of science or art was held to include an opinion pertaining to a tape script.

9. The only issue which needs to be decided is, whether Hans Raj Miglani can be called upon to give a voice sample.

10. Before Hans Raj Miglani's credibility can be impeached, it would have to be established that the document i.e. the tape contains the conversation in which Hans Raj Miglani has spoken with the receiver. Till purity thereof is established, it would be

impossible to contradict current statements made by Hans Raj Miglani.

11. In the report published as (2005) 3 Cal.LT 55, *Dwijadas Banerjee & Ors. Vs. State of West Bengal*, it was observed that the power of comparison either in writing, or finger prints or voice lies with the court, if it is required by the court in any trial or proceeding for just decision of the case, the court may pass appropriate orders.

12. I eschew the decisions pertaining to criminal trial where right of silence of the accused was in issue and court denied permission to the prosecution to obtain voice sample during stage of investigation.

13. Instant case is for a civil claim praying for a money decree.

14. Subject to the statutory safeguards to be ensured, namely, no editing, cutting or pasting as also authenticity of the tape being established, petitioner would be entitled to prove, with reference to voice sample of Hans Raj Miglani, the contents of the tape recorded conversation.

15. The petition stands disposed of quashing the impugned order dated 31.5.2001. Petitioner's application is allowed.

16. Learned Trial Judge would obtain voice sample

recording of Hans Raj Miglani and at the expense of the petitioner would obtain a forensic opinion of the voice expert in respect of the tape recorded conversation on which the petitioner relies.

17. No costs.

March 26, 2007 PRADEEP NANDRAJOG, J
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